

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

Shakti Singh & anr. Vs The State of Rajasthan

D.B.CRIMINAL APPEAL NO.346/2003
against the judgment dt.21.01.2003
passed by Addl.Sessions Judge No.1, Udaipur,
in Sessions Case No.23/2001 (55/2000).

Date of Judgment:

May 29th, 2006

P R E S E N T

HON'BLE MR.JUSTICE N.N.MATHUR
HON'BLE MR.JUSTICE MANAK MOHTA

Mr.Doongar Singh, for appellants.
Mr.Vishnu Kachhwaha, Public Prosecutor.

REPORTABLE BY THE COURT: (PER HON'BLE MR.MATHUR J.)

1. The instant case unfolds a pathetic, chilling and sinister phenomenon whereby the life of an innocent husband has been eliminated from worldly scene by an unfaithful wife and her paramour. Second appellant Smt.Vandana, the wife and her alleged paramour first appellant Shakti Singh, was put to trial on the charge of murder of Piyush, the unfortunate innocent husband.

Learned Additional Sessions Judge by his judgment dated 21.01.2003, having found the prosecution case proved, convicted both the appellants of offence under Section 302/34 IPC and sentenced each of them to undergo imprisonment for life and to pay a fine of Rs.500/- & in default, to further undergo 15 days' simple imprisonment. Both of them have also been convicted of offence u/s.365 IPC and sentenced each of them to five years' simple imprisonment and to pay a fine of Rs.500/- & in default, to further undergo 15 days' S.I. They have further been convicted of offence u/s.201 IPC and sentenced each of them to three years' S.I. and to pay a fine of Rs.500/- & in default, to further undergo 15 days' simple imprisonment. Learned Judge also found the charge under Section 120B IPC proved and convicted them of the said offence but did not award any separate sentence.

2. Briefly stated the prosecution case is that on 1.3.2000, PW 19 Khem Raj submitted a written report Ex.P.40 before the Superintendent of Police, Udaipur, stating that his deceased son Piyush lived in Udaipur alongwith his wife for last two years. He used to run a beetle shop near 'Sukhadiya Samadhi'. On his visit to Udaipur alongwith his wife, he found his son missing since 19th February. His son's house and Cabin were found locked. He contacted his relatives, friends and in-laws of his son at Kankroli but

there was no satisfactory response. He submitted another report Ex.P.25 on 3.3.2000 at Police Station, Bhupalpura stating inter alia that he had given a missing report of his son & daughter-in-law on 1.3.2000. It revealed during search that his daughter-in-law i.e. wife of his deceased son Piyush viz; Vandana with the help of her paramour viz; Shakti Singh had kidnapped him. He got the said clue from an S.T.D. Booth at Ashok Nagar. As per the information collected, Vandana, from that STD Booth, used to make call at an STD Telephone No.02952-20819 at Rajnagar. The said call used to be received by P.W.1 Ganesh Kumawat who, in turn, used to arrange her talk with the first appellant Shakti Singh. It was submitted that interrogation from Ganesh might yield something substantial. On this information, the police registered a case for the offence u/s.365 IPC. During investigation, both the appellants i.e. Shakti Singh & Vandana were arrested on 7.3.2000. In pursuance of the specific informations given by both the appellants, a decomposed headless dead body was recovered from the graveyard at Udaipur. It was disclosed that Vandana had taken deceased Piyush, on the pretext of performing 'pooja' alongwith appellant Shakti Singh on a scooter, to an isolated place, where he was killed by hitting stone on the head. Deceased Piyush was beheaded by sword and the body was buried on the bank of river 'Aayad' at Udaipur. In pursuance of another information given by Shakti Singh, a

human skull was recovered on 9th March, 2000 from river bed on Rajnagar Highway. The post mortem of the dead body (skeleton) and the skull was performed on 13th March, 2000. In pursuance of the information given by appellant Shakti Singh, a blood stained sword was recovered. The police also recovered the photographs of appellants in romantic pose vide Ex.P.28, 29 & 30. The police also recovered the blood stained clothes of the appellants i.e. t-shirt, pants, woolen sweater, saree and blouse. In pursuance of the information given by appellant Shakti Singh, golden chain, ring and wrist watch of deceased were also recovered. The weapon of offence i.e. blood stained stone was also recovered in pursuance of the information given by appellant Shakti Singh. The police also collected incriminating evidence as to the conduct of appellant to the effect that while deceased Piyush was found missing since 19th February, 2000, both the appellants had lodged themselves in Surya Guest House from 19th to 22nd February. They had also stayed in another hotel on 4th March at Nathdwara. In between, they travelled to various places upto Nepal. The skeleton and human skull were sent to the Central Laboratory, Hyderabad for DNA Test. DNA of sample blood of parents indicated biological relation of recovered skeleton and skull with parents of deceased Piyush i.e. P.W19 Khem Raj and his wife Bhagwati. After investigation, the police laid the chargesheet against both

the appellants for the offence u/ss.302, 302/34, 365/34, 201/34 and 411 IPC.

3. The appellants pleaded not guilty and claimed trial. The prosecution adduced oral & documentary evidence to prove the charges against them. The appellants in their statements u/s.313 CrPC denied the correctness of the prosecution evidence appearing against them and pleaded innocence. Learned trial Judge having found the prosecution case proved, convicted & sentenced the appellants in the manner stated above.

4. Assailing the conviction, it is contended by Mr.Doongar Singh, learned counsel for the appellants, that it was a blind murder and the appellants have been roped-in merely on suspicion. Learned counsel has dealt with each incriminating circumstance and pointed out infirmities, which according to him are fatal. It is vehemently argued that the prosecution has failed to show that corpus delicti recovered from the place alleged to have been pointed out by the appellants is that of missing person viz; Piyush. On the other hand, learned Public Prosecutor has supported the judgment of the trial Court.

5. There is no direct evidence in the sense of an eye witness account to connect the appellants with the crime.

The prosecution, however, relied-upon the following piece of circumstances in order to establish the charge of kidnapping and murder levelled against the appellants:

(i) Recovery of headless decomposed corpus recovered from outside the graveyard at Udaipur and a human skull on 9.3.2000 from a river-bed on Rajnagar National Highway in pursuance of the information given by the appellants Shakti Singh and Vandana and the same was identified as that of deceased Piyush on the basis of post mortem report and the DNA Test;

(ii) Recovery of blood stained sword in pursuance of the information given by appellant Shakti Singh;

(iii) Recovery of blood stained clothes in pursuance of the information given by appellant Shakti Singh;

(iv) Recovery of golden chain, golden ring and wrist watch of the deceased in pursuance of the information given by appellant Shakti Singh;

(v) Recovery of blood stained stone;

(vi) Recovery of Scooter;

(vii) Conduct of both the appellants after 19.2.2000, the date on which the deceased was last seen; &

(viii) Both the appellants had a strong motive to murder Piyush.

6. It is well settled that where the inference of guilt of accused persons is to be drawn from circumstantial evidence, only those circumstances must in the first place be cogently established. Further, those circumstances should be of a definite tendency pointing towards the guilt of the accused and in their totality, must unerringly lead to the conclusion that within all human probability, the offence was committed by the accused and none else.

7. Before we proceed to deal with each of the circumstances put forward by the prosecution, we may deal with the contention of the learned counsel with respect to identity or recovery of corpus delicti regarding which a great deal of argument is advanced.

8. It is well settled that the recovery of dead body is not very material but the death of person alleged to have been killed by the accused, must be proved. The Apex Court in *Ram Chandra v. State of Uttar Pradesh* reported in AIR 1957 SC 281, observed that -

"It is true that in law a conviction for an offence does not necessarily depend upon the corpus delicti being found. There may be reliable evidence, direct or circumstantial, of the commission of the murder though the corpus delicti are not traceable."

9. "Corpus delicti" means "the body of crime" or the material substance upon which the criminal act was committed. In the case of homicide, "the corpus delicti" is the body of the victim who has been killed by the unlawful act of another human being. Under the old English Law, the recovery of the dead body was must but in India, as laid down by the Apex Court in number of judgments, recovery of dead body is not very material but the death of the person alleged to have been killed by the accused, must be proved. Reference be made to (1) Rama Nand v. State of Himachal Pradesh, reported in AIR 1981 SC 738; (2) Sevaka Perumal v. State of Tamil Nadu reported in AIR 1991 SC 1463; (3) Henry Westmuller Roberts v. State of Assam reported in AIR 1985 SC 823; and Suresh Chandra Bahri v. State of Bihar reported in AIR 1994 SC 2420.

10. In certain cases, even where the dead body of the deceased person is not recovered or seized but if there is positive evidence to connect the culprit, it cannot be said that the offence of murder is not established. Thus, the corpus delicti or the fact of homicidal death can be proved by telling and inculcating circumstances which definitely

lead to the conclusion that within all human probability, the victim has been murdered by the accused concerned.

11. Before we proceed to deal with each piece of circumstances, it would be convenient to broadly survey the prosecution evidence.

12. P.W.1 Ganesh Singh is the owner of the S.T.D. Booth at Kankroli. He deposed that appellant Shakti Singh used to visit his shop to make telephonic calls. He used to talk with a girl at Udaipur. There used to be some telephonic calls by a girl from Udaipur, who disclosed her name as Vandana. He had arranged talks of Vandana with Shakti Singh.

13. P.W.17 Gopal is the relative of deceased Piyush. He stated that he had last seen the deceased on 19.2.2000. At that time, he was wearing a golden chain, a wrist watch and a black t-shirt. On 20.2.2000, when he visited the shop of deceased, it was found locked. His house in Ashok Nagar was also locked. He is also motbir of different police memos. Thus, he has given details of recoveries.

14. P.W.21 Purushottam is also a relative of deceased Piyush. He deposed that on 22.2.2000, one Bhagwatilal informed him on telephone that Piyush was missing. He also stated that he came to know from certain sources that his

wife Vandana was having illicit relations with Shakti Singh. He had gone to the police station alongwith Khem Raj, father of deceased. He is also motbir of the different police memos. He has given details of recoveries.

15. P.W.19 Khem Raj is the father of deceased Piyush. He resided in Village Jesawada Tehsil Garbada District Dahod in Gujarat State. He deposed that his son Piyush used to run a beetle shop in Ashok Nagar at Udaipur. He used to frequently talk to him on telephone to know about his welfare. Fifteen days prior to 29.2.2000, while talking on telephone, he had expressed his suspicion as to his wife Vandana's illicit relations with Shakti Singh. He has given the details as to the search made by him of his son Piyush. He has also given some details of the investigation.

16. P.W.7 Basant Singh is relative of appellant Shakti Singh. He deposed that appellant Shakti Singh took his Uncle's Scooter No.RJ30M966 on 19.2.2000 assuring that he would return the same within half an hour. But he returned the said Scooter on the next day.

17. P.W.3 Ratan Singh was the employee of a guest house viz; Surya Guest House at Raj Nagar. He stated that on 19.2.2000, the appellants Shakti Singh and Vandana checked-in the said Guest House and stayed upto

22.2.2000. He also produced the relevant register Ex.P.2 showing the entry of appellants at item No.A to B & D to D. The entry is in the handwriting of appellant Shakti Singh.

18. P.W.9 Damodar Singh is the proprietor of a hotel at Nathdwara. He deposed that both the appellants were lodged in his hotel as guests on 4.3.2000. He produced the relevant register Ex.P.7, wherein there is entry of the appellants at item No.536.

19. P.W.2 Mohd. Sagir and P.W.5 Bhupendra Singh are the formal witnesses. They have not supported the prosecution as such. They were declared hostile.

20. P.W.4 Munshi Mohd. deposed that while he was proceeding towards the City and passed through 'Aayad' river, he found that some people had assembled in the graveyard area. He found that in the presence of police, a young boy was digging the earth. He also stated that for burying a dead body in the graveyard, a pit is to be dug upto the depth of 4ft to 5ft. The dead body is covered by a white cotton cloth known as 'Kafan'. His statement rules out possibility of the recovered body of a person buried in natural course, as it was dug out upto the depth of 1 ½ ft. and not 4-5 ft. There was no 'Kafan'.

21. P.W.6 Rajesh is another motbir of the recovery of Scooter.

22. P.W.14 Sunderlal was incharge of the Police Station, Rajsamand at the relevant time. He produced the record of the cases against appellant Shakti Singh, who was accused in FIR Case Nos.746/96, 112/98 & 494/98 for the offence u/ss.307, 336, 341, 323 IPC respectively. We have already referred-to some of the other motbir witnesses of different police memos.

23. As regards the link evidence, PW 13 Satya Narain stated that at the relevant time, he was incharge of the Malkhana at the Police Station, Bhupalpura, Udaipur. He stated that he received articles in FIR Case No.62/2000 in sealed condition. He gave those articles i.e. stone, blood stained sword, clothes and soil to PW 8 Madanlal for delivery in the FSL at Udaipur. He also gave the skull in a packed & sealed condition to PW 20 Nuruddin for depositing the same in the Malkhana at Jaipur.

24. P.W.8 Madanlal stated that he received seven packets in sealed condition from the Malkhana Incharge of the Police Station, Bhupalpura, for depositing the same in the FSL at Udaipur. After obtaining the forwarding letter and the sample seal from the Superintendent of Police, Udaipur vide

Ex.P.5, he deposited the said articles in the FSL, Udaipur on the same day.

25. P.W.12 Baktavar Singh stated that at the relevant time, he was posted as ASI at the police Outpost Aayad, Police Station Bhupalpura, Udaipur. He received the articles to be deposited with the FSL at Jaipur & for onward forwarding to the Central Laboratory at Hyderabad. He carried with him the forwarding letter alongwith specimen seal from the Superintendent of Police, Udaipur vide Ex.P.13. He deposited the said articles with the FSL at Jaipur in a sealed condition. After obtaining the requisite letter from the FSL, he carried the said articles to Hyderabad. The articles were kept in sealed condition.

26. P.W.20 Nuruddin was posted as Constable at the Police Station, Bhupalpura at the relevant time. He stated that he carried the four packets to the FSL, Jaipur in sealed condition vide Ex.P.45 and obtained the receipt vide Ex.P.46. The articles were deposited in the FSL at Jaipur. The FSL Report Ex.P.64 shows that all the articles were received in the Laboratory in the sealed condition. Thus, by the link evidence, the prosecution has established that the articles remained intact right from the moment they were recovered until they reached to the concerned F.S.L.

27. P.W.18 Dr.G.L.Dad, P.W.22 Dr.Harish Nagpal and P.W.12 Dr.Narendra Kumar are the witnesses of medical evidence.

28. We shall deal with each of the circumstances in seriatim:

29. RECOVERY OF DECOMPOSED CORPUS & HUMAN

SKULL: Appellants Shakti Singh & Vandana were arrested on 7.3.2000 vide Ex.P.26 & 27 respectively in the mid night at about 12.30AM. Mst.Vandana made a disclosure statement on the same day at about 7.30AM vide Ex.P.55 that on 19.2.2000, she took her husband Piyush in the company of Shakti Singh near the 'Aayad' river, Udaipur, on the pretext of performing 'Pooja'. They killed him & buried his body on the bank of 'Aayad' river. She expressed her desire to get the dead body and the stone recovered. Appellant Shakti Singh also made a disclosure statement at 7.50 AM vide Ex.D.4. that on 19.2.2000, he alongwith Vandana took deceased Piyush to 'Aayad' river, Udaipur and killed him. The dead body was buried on the bank of 'Aayad' river. He expressed his desire to get the dead body of Piyush recovered. Pursuant to the disclosure statements made, both the appellants took PW 23 Jaswant singh and others to graveyard on the bank of 'Aayad river' and exhumed the buried corpus vide Ex.P.49 in the presence of

motbirs PW 21 Purushottam and Bhagwati Lal. Appellant Shakti Singh made another disclosure statement on 9.3.2000 vide Ex.D.5 stating that he wrapped the head of deceased Piyush in a t-shirt, put it in a gunny bag and buried the same beneath a bridge over 'Khari river' ahead of Nathdwara. He expressed his desire to get the same recovered. Pursuant to the said information, he led the police party to 'Khari river', got the skull recovered vide Ex.P.24 in the presence of motbirs PW 21 Purushottam and Bhagwati Lal. The recovered corpus and the skull were sent for post mortem, which was conducted by PW 18 Dr.G.L.Dad and PW 22 Dr.Harish Nagpal.

30. Before advertng to the controversy involved and the contentions raised, we consider it appropriate to extract the post mortem report, Ex.P.36, as follows:

"External appearance

Body is brought in advanced stage of decomposition into two parts recovered at different places in the stage of incomplete skeletonization.

Part A – received on 7.3.2000 which involves the part of abdomen, pelvis, lower limbs in the stage of advanced decomposition & admixed with sand & dust particle.

Part B – received on 13.3.2000 which involves the skull with ligaments attach at the base of skull with three fracture pieces of skull bones & pieces of mandible with ten loose teeth with bunch of hairs (scalp).

Examination of Part A -

1. Gross Examination: Ant. Abdominal wall present from lower ribcage to pelvis alongwith pubic hairs (skin of abdominal with pubic hairs are preserved for DNA Analysis) Abdominal organ absent.

In this part, following members are present:

(i) Pelvis with attach ligament & muscle at places in stage of advanced decomposition stage.

(ii) Sacrum alongwith lumbar vertebra with muscle & ligament attach in stage of advanced decomposition stage.

(iii) Left lower four ribs are present alongwith muscles in advanced stage of decomposition.

(iv) Organ – Bladder with prostate in stage of advanced decomposition.

(v) Rt. femur, tibia alongwith muscle & ligaments in stage of advanced decomposition.

(vi) Lt.femur, tibia, fibula, patalla & tarsal bones – Talus, calcaneum, cubical, navicular, cuneiform three in No., second metatarsal, Greater helex alongwith ligaments & muscle attach in advanced stage of decomposition.

2. Examination Proper:

(i) Pelvis: Ischiopubic semi everted of male type
Greater sciatic notch narrow & deeper of male
Ischial tuberosity inverted
Acetabulum & pubic ratio of male type
Subpubic angle is acute of male type
Obturator foramen of oval in shaped.

all these are indicative of male adult pelvis.

(ii) Pelvis with lumbar vertebra & Ant. Abdominal wall is in the advanced stage of decomposition with dust & sand present in pelvic cavity & in pelvic cavity Bladder present with prostate.

(iii) in Both lower limbs muscles & ligaments are attached at places. Length of femur is 40cm.
Length of tibia is 38cm.
Both femur & tibia length is 79 cm.

Body Height = 70.37+1.22 (femur+tibia) + 3.24
(Approximate)

= 70.37+1.22 x 79cm + 3.24cm.

= 166.75 + 3.24cm

in feet = 5 feet 6 inch + 1 inch

No any bony injury seen in above mention bones.

Examination of Part B -

Skull present with three fracture pieces of skull bones of Rt. occipito parietotemporal region.

(i) Pieces 1st triangular in shape, 5cm x 4cm in its max. dimensions showing inward depress fracture which is antemortem in nature.

(ii) Pieces of 2nd & 3rd are pieces of middle & postr. Cranial fossa which are fractured antemortemly.

On Gross examination skull belongs to be male adult type with following point in favour:

Orbit square in shaped & rounded margin male type.

Supra orbital ridges prominent.

Frontal & parietal eminence not prominent.

Zygomatic arch prominent.

Gabella prominent.

All upper jaw tooth with 3rd molar teeth present with three loose tooth.

Circumference 53cm, length of Nasio – occipital 31cm of adult type.

Examination Proper:

(i) On Rt. side of skull – there is bone gap (depress fracture) present on Rt. parieto occipito temporal region with missing of middle & postr. Cranial fossa bones with Rt.mastoid.

(ii) There is intact fracture line extending from Rt. parietal extending anteriorly upto cranial sublime & medially upto saggital sublime, which is ante mortem in nature.

(iii) On left side of skull showing fracture line on Lt. parietal region to left temporal region extending upto middle cranial fossa at base involving the external auditory meatus which is ante mortem in nature.

(iv) There is fracture line extending from Lt. supramaxillary region to vertically downwards upto the

point below 2nd premolar & 1st molar teeth.

(v) There is two sharp linear cut present over the frontal bone on either side in the outer table which are antemortem in nature and about 4cm in length on both side.

(vi) Few ligament (in decomposed state are attached at the base of skull.

(vii) Pieces of Lt. mandible which is grossly consistent with skull, showing three molar & 2nd premolar teeth. There is sharp cut at its ant. Margin which is antemortem in nature, mandible of adult age showing -

presence of 3rd molar.

Mental foramen below mid of upper & lower border of Ramus.

Concloyoid proces just above coronoid process.

(viii) There are loose teeth 10 in No. found along with skull bones alongwith Bunch of hairs.

Parts preserved for DNA ANALYSIS:

Sealed Jar 1: Contain Left Pelvic Bone, skin & pubic hair + muscle mass.

Sealed Jar 2: Contain skull bone (occipital), mandible (piece) + scalp hairs.

Sealed Glass vial 3: Contain blood of father 10 cc.
Khemraj Paliwal S/o Chaturbhuj 56 yrs. R/o Jeswara.

Sealed Glass vial 4: Contain blood of mother 10 cc.
Smt.Bhagwati Devi w/o Khemraj 45 yrs. R/o Jeswara.

For Radiological age:

Adv. X Ray of Skull of Part B
X Ray of Pelvic Bone of Part A

Opinions:

1. The present bone of skeleton belongs to human being.
2. The bones belongs to male sex.
3. The age of male is young adult (Approximate 30 yr).
4. Height of the person is about 5feet 6inches (one inch +).
5. Time since death is within about 3-4 weeks.

6. Cause of death of Part B is **Head injury** with multiple fractures skull bones, which are antemortem in nature.

Cause of death of Part A is same if Part A & Part B are of same person for which DNA test is advised.

NOTE: 1. D.N.A. ANALYSIS to confirm whether the jar No.1 & 2 are of same person.
2. For detection of paternity of No.1 & 2 for which blood sample of parents is also being sent (3 & 4)."

31. For detection of paternity, part-A which involved the trunk of the body and part-B which involved the skull, were placed in two separate jars. The blood samples of the parents of the deceased i.e. PW 19 Khem Raj (father) and Smt.Bhagwati (mother) were also taken in two separate jars marked as "P3" and "P4". All the four jars were sent to **Centre for DNA Fingerprinting and Diagnostics (CDFD), Hyderabad** through Director, FSL, Raj., Jaipur. In the opinion of the Medical Board, the bones and skull belonged to the human being of male sex. The age of young adult was estimated to be 30 years. The cause of death was head injury with multiple fractures.

32. P.W.10 Dr.Narendra Kumar, Radiologist, stated that he had taken the x-rays of the part of the skull and part of pelvic bones, which were brought by PW 16 Nasir Khan, ASI. As per the radiological report Ex.P.8, the skull and pelvic bone was of a male sex between 25 to 30 years.

33. As per the DNA Report Ex.P.73, the source of exhibit B (muscle mass) was found to be biologically related to the sources of exhibits A and D of Smt.Bhagwati and Khem Raj respectively.

34. Learned counsel has criticized the evidence of recovery on number of grounds. It is submitted that headless and some part of decomposed corpus was recovered by the police on 7.3.2000 but the post mortem was conducted as late as on 13.3.2000. There is no evidence as to how the decomposed corpus was kept intact for five days. It is also pointed out that PW 18 Dr.G.L.Dad has admitted in the cross examination that the police brought the skull in open condition. The relevant part of the admission is extracted as follows:

" यह सही है कि उस कंकाल की खोपड़ी वगैरा जो पुलिस वाले लाये थे वह खुली हालत में लाये थे। हमारे अनुसार खोपड़ी व शरीर के परीक्षण से यह पाया जाता है कि उसकी मृत्यु का समय एक ही होगा। हमने सिर व धड़ का परीक्षण एक ही दिन किया था क्योंकि धड़ हमारे पास 7.3.00 को लाये थे। "

35. Dr.G.L.Dad also stated that he did not perform the post mortem on the headless corpus on the same day under the hope that if the skull would be recovered, he might perform the post mortem of both the parts of the body at one time. A similar criticism has also been made as to the

careless manner in which the sample of blood was sent to the CDFD, Hyderabad. Learned counsel has invited our attention to receipt of unsealed flask vide Ex.D.3, the relevant part is extracted as follows:

"

3. Unsealed flask containing ice having:

- (i) Blood sample of mother Smt.Bhagwati Devi
- (ii) Blood sample of father of the deceased Sri Khemraj."

36. Learned counsel, relying on a decision of the Supreme Court in State of Rajasthan v. Daulat Ram reported in AIR 1980 SC 1314, has submitted that it is the duty of the prosecution to prove that while in their custody, the packets containing incriminating articles remained in sealed condition and were not tampered with.

37. No doubt the infirmities pointed out by the learned counsel indicates towards the casualness on the part of the investigating officer. However, the question arises for consideration is as to whether the infirmities pointed out in the instant case, are fatal to the prosecution as to discard the entire incriminating circumstances of prosecution evidence.

38. It is well settled that every defective investigation need not necessarily result in acquittal. The only requirement is of extra caution by the courts, while evaluating the evidence. In a deficiency or irregularity in the investigation, it need not necessarily result in rejection of the case of the prosecution which is otherwise proved. The Court is required to look into the broader possibilities and not to get swayed by the minor contradictions or insignificant discrepancies, which are not of substantial character. Every piece of circumstance is required to be appreciated having regard to the background of the entire case and not in isolation. It would have been proper if the prosecution could lead evidence to show that the skull which was recovered vide Ex.P.24 remained intact in sealed packet, till it reached to hospital for autopsy. The question arises whether a negligence by way of omission on the part of the investigating agency is fatal to the prosecution in the instant case. It is of-course true that in Daulat Ram's case (supra), the Apex Court has laid down that it is for the prosecution to prove that the incriminating article remained intact right from the moment it was seized till it reaches to the laboratory for examination. That was a case under the Opium Act, where the prosecution was required to establish that the substance recovered was opium. The possibility could not be ruled out that the prosecution in anxiety to establish their case, could have planted opium in place of

the substance recovered from the possession of the accused. But in the instant case, such a possibility is completely ruled out. It must not be lost sight that the prosecution was required to establish that the skull recovered was of the same body, which was recovered earlier. It is difficult to conceive that even the smartest of smart police officer could have planted such skull. Similarly, a criticism has been made with respect to sending of samples of blood in jars, which were not properly sealed. In this regard also, it is difficult to conceive that the police would have planted the sample of blood, which could establish the biological relationship with the pelvic bone skin or muscle mass of the body recovered on DNA Test. Thus, prudent appreciation on broader possibilities, we are of the view that criticism levelled is unsustainable. A criticism has also been made that the sample tests were taken twice from PW 19 Khemraj and his wife Smt.Bhagwati. As the sample taken on 13.3.2000 was not found to be fit for DNA Test, the second sample of PW 19 Khemraj vide Ex.P.44 and Smt.Bhagwati vide Ex.P.54 were taken on the request of the CDFD, Hyderabad. Thus, having regard to the background of the entire evidence of recovery, we are of the view that the infirmities pointed out in the instant case, are not fatal to the prosecution. The existence of decomposed corpus under the earth and so as the skull, was in the exclusive knowledge of both the appellants. Thus, it is established by

the prosecution evidence referred-to above that part-A i.e. trunk of the body and part-B i.e. skull were of a person of male sex aged between 25 and 30 years. As per the DNA Test, the paternity of the part-A and part-B of the body has been established with PW 19 Khemraj and his wife Smt.Bhagwati. Thus, it can be safely concluded that the decomposed corpus and the skull recovered was of none else but the son of PW 19 Khemraj i.e. deceased Piyush. Thus, we are of the view that the prosecution has succeeded in establishing the first incriminating circumstance conclusively by positive evidence pointing towards the guilt of the appellants.

39. RECOVERY OF THE BLOOD STAINED SWORD:

Pursuant to the disclosure memo Ex.P.59, the blood stained sword was recovered vide Ex.P.22 in the presence of motbirs PW 21 Purushottam and Bhagwati Lal. It was sealed and packed on the spot. The packet was marked 'C'. It was deposited by PW 23 Jaswant Singh with the Malkhana. As per the FSL Report Ex.P.64 on serological examination, the blood stains found on it, were of human origin. We have dealt with the link evidence, which shows the articles remained intact right from the moment of recovery till they reached to the Forensic Science Laboratory.

40. In this regard, a criticism has been made to the effect that

sword has been recovered from a well. There was water in the well upto 5ft. Thus, even if there was any blood on the sword, it must have washed out. There is no substance in the contention, as once the blood is clotted, it does not stand washed out simply because the sword remained in the water. A similar contention was rejected by the Division Bench of this Court, to which one of us (Hon'ble Mathur J.) was a party, in State of Rajasthan v. Shri Bhagwan reported in 2000(1) RLW 650. The said decision has been upheld by the apex Court in Shri Bhagwan v. State of Rajasthan reported in AIR 2001 SC 2342. It is held therein that -

“Once the blood is clotted, unless efforts are made to remove the blood spots, it does not disintegrate and disappear just by coming into contact with the water.”

41. Thus, we hold that the prosecution has succeeded in establishing the second circumstance of recovery of blood stained sword by positive evidence, which is of conclusive nature.

42. RECOVERY OF THE BLOOD STAINED CLOTHES:

Appellant Shakti Singh made a disclosure statement to PW

23 Jaswant Singh vide Ex.P.61 stating that the clothes which he was wearing on the date of incident alongwith saree and blouse of Vandana as also their photographs, love letters diary and tickets of their Nepal travel, have been kept in a bag lying at the house of his uncle Bhupendra Singh in Nathdwara. Pursuant to the said information, he led the police party to the house of Bhupendra Singh and got recovered the t-shirt, sweater, pants, saree and blouse. They were sealed and packed on the spot in a packet marked 'E'. The packet was deposited in the Malkhana and the same was sent to the Forensic Science Laboratory for examination. We are not dealing with the link evidence as the same has not been challenged. As per the FSL Report Ex.P.64 on serological examination, the blood stains on t-shirt, sweater, pants, saree and blouse were found to be of human origin. There is no explanation as to the presence of human blood on the clothes of accused appellant Shakti Singh. Thus, the prosecution has succeeded in establishing the third circumstance against appellant Shakti Singh by positive evidence which is of conclusive nature.

43. RECOVERY OF GOLDEN CHAIN, GOLDEN RINGS AND WRIST WATCH: Appellant Shakti Singh made a disclosure statement vide Ex.P.63 before PW 23 Jaswant Singh wherein he stated that after committing murder of Piyush with the aid of Vandana, he had removed the golden

chain from his body which he had sold to Roshanlal at Kankroli for a sum of Rs.5000/-. As to the wrist watch, he stated that the same was lying in his house. Pursuant to the information given by him, he got the golden chain recovered from Roshanlal vide Ex.P.34. Similarly, he got the wrist watch recovered vide Ex.P.32. Two golden rings belonging to deceased were also recovered from the possession of the appellant shakti Singh vide Ex.P.33. P.W.11 Himmat Singh, Tehsildar, stated that he had arranged identification of the property vide Ex.P.12, wherein father of deceased PW 19 Khemraj identified the golden chain and wrist watch belonging to the deceased. PW 19 Khemraj has stated that he identified the golden chain and wrist watch during identification proceedings. He also identified both the articles in the court as belonging to the deceased. No explanation has been given by the accused appellant as to how the golden chain and wrist watch belonging to deceased, came to his possession. Thus, the prosecution has succeeded in establishing by incriminating evidence of recovery of golden chain and wrist watch belonging to the deceased, the guilt of the appellants.

44. RECOVERY OF THE STONE: Pursuant to the information Ex.D.4, appellant Shakti Singh got a blood stained stone recovered vide Ex.P.50 from the place where the decomposed corpus was buried. The stones were packed

& sealed on the spot. The packets were marked as 'A' & 'A1". As per the FSL Report, the blood stains on the stones were found to be of human origin on serological examination. The prosecution has succeeded in establishing this piece of circumstance as well.

45. RECOVERY OF THE SCOOTER: Pursuant to the information given by the appellant Shakti Singh vide Ex.P.60, he got the Scooter recovered which he alleged to have used for taking deceased Piyush to the place of incident vide Ex.P.4. The recovery has been made in the presence of motbirs. P.W.7 Basant Singh has stated that recovered Scooter was taken by the appellant Shakti Singh on 19.2.2000 and returned the same on the next day i.e. 20.2.2000. The prosecution has succeeded in establishing this part of the incriminating circumstance as well against the appellant Shakti Singh.

46. CONDUCT OF THE APPELLANTS: PW 17 Gopal has stated that he had last seen the deceased Piyush on 19.2.2000. Thus, it is evident that the deceased Piyush was not seen after 19.2.2000. PW 3 Ratan Singh, an employee of the Surya Guest House at Raj Nagar, has deposed that on 19.2.2000, appellant Shakti Singh alongwith Vandana arrived in the Guest House and stayed upto 22.2.2000. It is significant that while deceased Piyush was missing since

19.2.2000, his wife Vandana was moving in the company of appellant Shakti Singh. She has not given any explanation as to how, she was in the company of appellant Shakti Singh and stayed in the Surya Guest House during the period 19th to 22nd Feb., 2000. Again, there is the evidence of PW 9 Damodar Singh, proprietor of a hotel at Nathdwara, who has deposed that both the appellants stayed in his Guest House on 4.3.2000. He has also produced the relevant register. Their conduct shows that having accomplished the crime of murder of Piyush, both the appellants were absconding or moving extensively. This conduct speaks in volume particularly Mst.Vandana of her participation in the crime. The clothes of the appellant Shakti Singh and Vandana alongwith their photographs have been found in one bag recovered from the house of Bhupendra Singh vide Ex.P.61. The photographs in romantic pose clearly indicates that they were having extra marital relations. As regards the photographs, it is submitted by the learned counsel that the photograph being the secondary evidence, is not admissible in evidence as the negative has not been produced, which is a primary evidence. We are unable to agree with the submission of the learned counsel, as the negatives could not have been produced, the same being in the possession of the appellants. It is well established that piece of conduct of the accused can be held to be incriminatory which has no reasonable explanation except on the hypothesis of guilt. In

Anant Chintaman Lagu v. State of Bombay reported in AIR 1960 SC 500, the Apex Court held that the conduct which destroys the presumption of innocence, can alone be considered as material. In the instant case, Mst. Vandana, instead of going in search of her missing husband or making a complaint to police or reporting to parents and other relatives, was found moving with co-accused Shakti Singh, coupled with other incriminating circumstances referred-to above, point towards the guilt of the appellants. It is said that often circumstances speak with unerring certainty. In Anant Lagu's case (supra), the case of Mary Ann Nash, 1911 Cr App R 225 is referred, wherein there was evidence that mother left the house with her illegitimate child of 5 years but returned without him. She made several statements as to what had happened to the child, which were found to be untrue. Later, the body of the child was discovered in a well. Decomposition had so far advanced that even the sex of the child could not be determined. It was contended that there being no proof how death took place, the judge should not have left the case to the jury but ought to have withdrawn it. Lord Chief Justice delivering the judgment of the Court of appeal referred to the untrue statements of the prisoner about the whereabouts of the child and observed as

follows:

"All these statements were untrue. **She had an object in getting rid of the child, and if it had been lost or met with an accidental death, she had every interest in saying so at once.** It is said there is no evidence of violent death, but we cannot accept that. Mr.Goddard cannot have meant that there must be proof from the body itself of a violent death. In view of the facts that the child left home well and was afterwards found dead, that the appellant was last seen with it, and made untrue statements about it, this is not a case which could have been withdrawn from the jury."

47. In the said case, the conduct of the accused to the effect that if the child had been lost or met with an accidental death, she could have said so at once. Not only this, she made untrue statements about this. In the instant case, the conduct of Mst.Vandana positively points towards the guilt, as she had not raised a word about disappearance of her husband.

48. MOTIVE: The conduct as indicated above clearly indicates that the appellants somehow wanted to put deceased Piyush out of their way. From the prosecution evidence, it is abundantly clear that Vandana was having friendly relations with appellant Shakti Singh. PW 1 Ganesh Singh has clearly stated that he used to arrange telephonic talks between them on his STD Booth. Similarly, PW 17 Shri Gopal has also stated about the illicit relations of Vandana

with appellant Shakti Singh. PW 19 Khemraj has stated that his deceased son Piyush told him on telephone as to Vandana having illicit relations with appellant Shakti Singh. The conduct of both the appellants that they disappeared, since the day of missing of Vandana's husband Piyush i.e. 19.2.2000 and they were staying in hotels in one room and under one roof, positively indicates towards their illicit relations and ill motives. The motive is something which prompts a person to form an opinion or intention to do certain illegal act with a view to achieve that intention. It clearly appears that Vandana and Shakti Singh had strong motive to do away deceased Piyush to achieve their obvious desire.

49. Thus, on reappraisal of the entire evidence on record, we hold that prosecution has established each piece of circumstances, by positive evidence which are of conclusive nature and taken together, leads to the irresistible conclusion that it were the appellants Shakti Singh and Vandana, who committed the murder of Piyush.

50. Consequently, we find no merit in the instant appeal and the same is hereby dismissed. The conviction of the appellants of the offence u/ss. 302/34, 365 & 201 IPC is

confirmed. They are in jail. They will serve out the remaining part of the sentence.

(MANAK MOHTA), J.

(N.N.MATHUR), J.

RANKAWAT JK, PS